

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DESEAN KINGWOOD

Petitioner,

v.

ROBERT GILMORE, *et al.*

Respondents.

CIVIL ACTION NO. 20-3465

ORDER

AND NOW, this 30th day of April 2021, upon careful and independent consideration of the Petition for Writ of Habeas Corpus, and the related filings, and upon review of the Report and Recommendation (“R&R”) of United States Magistrate Judge Marilyn Heffley, to which no objections have been filed, it is hereby **ORDERED** that:

1. The R&R [Doc. No. 10] is **APPROVED** and **ADOPTED** as set forth herein;¹
and
2. The Petition will be dismissed by separate Order.

It is so **ORDERED**.

BY THE COURT:

/s/ Cynthia M. Rufe

CYNTHIA M. RUFE, J.

¹ On July 1, 2020, Petitioner filed a *pro se* petition under 28 U.S.C. § 2254 with regard to his 2016 state conviction for attempted murder and related offenses. As explained in the R&R, the petition is untimely under federal law. After pleading guilty to the charges, Petitioner was sentenced on September 7, 2016, and did not file a direct appeal. Therefore, the one-year time period to file a § 2254 petition began to run on October 7, 2016, when the 30 days to file a direct appeal expired. Petitioner filed a timely *pro se* PCRA petition in state court 360 days after that, on October 2, 2017. This stopped the federal clock with five days remaining of the one-year period. Petitioner’s PCRA proceedings moved forward with appointed counsel and were completed on May 27, 2020, when the Pennsylvania Supreme Court denied his petition for allowance of appeal. Petitioner had five days left to file his federal petition, but did not place the petition for mailing until July 1, 2020. This date, which is treated as the date the petition was filed, was a month too late. As the R&R concluded, there is no basis for equitable tolling, as Petitioner does not argue that he exercised due diligence but could not learn of the Pennsylvania Supreme Court’s order in time to file the Petition within the one-year period and has not otherwise demonstrated any exceptional circumstances that prevented him from timely filing the Petition.